

COLORADO COURT OF APPEALS

People v. Malcolm

2025 COA 95 · No. 23CA1793 · Decided December 24, 2025

SUMMARY

The Colorado Court of Appeals held that the district court improperly admitted evidence of Malcolm’s other alleged acts of child abuse under CRE 404(b) to prove motive and lack of accident. Because the prior acts lacked sufficient similarity to the charged conduct and the error was not harmless, the court reversed the conviction for child abuse resulting in serious bodily injury and remanded for a new trial.

CASE DETAILS

COURT	Colorado Court of Appeals
WRITING FOR THE COURT	Judge Schock; Judge Harris; Judge Johnson
JURISDICTION	Colorado Court of Appeals
DECIDED	December 24, 2025
DOCKET	23CA1793
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Malcolm appealed her conviction for knowing or reckless child abuse resulting in serious bodily injury, challenging the admission of other-act evidence under CRE 404(b), a denial of a for-cause juror challenge, and admission of hearsay testimony. The Colorado Court of Appeals reversed the conviction because the other-act evidence was improperly admitted and the error was not harmless, and remanded for a new trial.
STANDARD OF REVIEW	Admission of other-act evidence under CRE 404(b) is reviewed for abuse of discretion. A district court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or is based on an incorrect understanding of the law. Nonconstitutional evidentiary error is harmless when there is no reasonable probability that it contributed to the conviction.
PRECEDENTIAL VALUE	published and precedential Colorado Court of Appeals opinion
PARTIES	Garland Kay Malcolm v. The People of the State of Colorado

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by admitting evidence of alleged prior acts of child abuse and mistreatment under CRE 404(b) to prove motive.
2. Whether the prior-act evidence was logically relevant and admissible under CRE 404(b) to prove that the child's injuries were not accidental and that Malcolm caused them.
3. Whether the erroneous admission of the other-act evidence was harmless.
4. Whether the court should address Malcolm's challenges to a for-cause juror challenge and hearsay testimony from a medical expert after reversing the conviction.

HOLDINGS

1. The district court did not abuse its discretion in admitting evidence that Malcolm physically punished or restrained the child for sneaking food because those acts were logically relevant to Malcolm's alleged motive, independent of a prohibited character inference. The other alleged acts, which were unrelated to sneaking food, were not logically relevant to that motive because their relevance depended on inferring that Malcolm was an abusive parent who was likely to abuse the child again.
2. The district court abused its discretion by admitting the prior-act evidence to prove lack of accident. Because the prosecution's theory was that Malcolm caused the injuries, rather than that she acted with a nonaccidental mens rea, the prior acts had to be roughly similar in nature and sufficiently similar in severity to the charged conduct. The admitted acts bore no such resemblance and were relevant only through the prohibited inference that Malcolm had a propensity to abuse children.
3. The erroneous admission of the other-act evidence was not harmless because the evidence played a significant role in the trial, was particularly prejudicial due to its disturbing nature, and the prosecution's case lacked direct evidence of how the child was injured.
4. The court declined to address Malcolm's challenges to the denial of a for-cause juror challenge and the admission of hearsay testimony because those issues were not likely to arise in precisely the same posture at a new trial.

KEY QUOTATIONS

“Such evidence is admissible only if it is (1) logically relevant (2) to a material fact (3) independent of the prohibited inference of the defendant’s bad character, and (4) its probative value is not substantially outweighed by the risk of unfair prejudice.” (¶ 14)

“The prosecution must explicitly connect the dots from the other act to the stated permissible purpose, with no step in that analysis premised on an inference as to the defendant’s character.” (¶ 15)

“Thus, given the lack of any similarity — in nature or severity — between the other acts and the charged abuse, the other acts were not logically relevant to prove that Malcolm caused the child’s injuries independent of the inference that she was an abusive parent.” (¶ 30)

“Thus, given the highly prejudicial nature of the other act evidence and its centrality to the prosecution’s case, we cannot conclude that the erroneous admission of that evidence was harmless.” (¶ 38)

FACTUAL BACKGROUND

Malcolm called 911 after her six-year-old son became nonresponsive and struggled to breathe outside the home. The child suffered a permanent brain injury, skull fracture, neck ligament injury, widespread retinal hemorrhages, and other bruising; treating doctors concluded that the serious injuries resulted from nonaccidental trauma, but no direct evidence established how they occurred. The prosecution introduced testimony and forensic interviews describing alleged prior acts in which Malcolm physically punished or mistreated her other children and the injured child.

PROCEDURAL HISTORY

The Montezuma County District Court admitted evidence concerning alleged prior acts of child abuse by Malcolm under CRE 404(b), and a jury convicted her of knowing or reckless child abuse resulting in serious bodily injury. Malcolm appealed. The Court of Appeals held that most of the other-act evidence was inadmissible to prove motive and all of it was inadmissible to prove lack of accident, concluded that the error was not harmless, reversed the conviction, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the judgment of conviction and remand to the Montezuma County District Court for a new trial. At retrial, the district court may reconsider whether the two acts involving punishment or restraint for sneaking food are substantially outweighed by unfair prejudice.

CASES CITED

- People v. Owens, 2024 CO 10, ¶ 105
- People v. Rojas, 2022 CO 8, ¶¶ 28, 52
- People v. Spoto, 795 P.2d 1314, 1318, 1321 (Colo. 1990)
- People v. Williams, 2020 CO 78, ¶¶ 12-14, 22, 24
- People v. Weeks, 2015 COA 77, ¶¶ 25-30, 38
- People v. Casias, 2012 COA 117, ¶¶ 26, 29-30, 33, 36-51, 60-68, 75
- People v. Jones, 2013 CO 59, ¶¶ 23-27
- Yusem v. People, 210 P.3d 458, 467, 469 & n.16 (Colo. 2009)

- People v. Harris, 2015 COA 53, ¶¶ 22, 25, 31-32
- People v. Sabell, 2018 COA 85, ¶ 38
- People v. Gulyas, 2022 COA 34, ¶ 29

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